

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>MARC NICKL,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CIV-06-501-R</b>
	)	
<b>JOSEPH SCIBANA, Warden,</b>	)	
	)	
<b>Respondent.</b>	)	

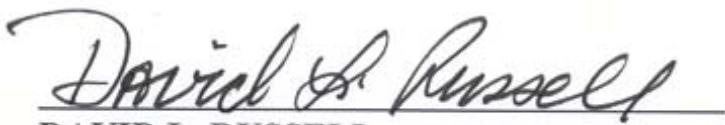
**O R D E R**

Before the Court is the Report and Recommendation of United States Magistrate Judge Doyle W. Argo entered May 19, 2006 and “Petitioner’s Motion to Object to the Report and Recommendation of the Magistrate Court” filed July 11, 2006, which the Court treats as an Objection to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation *de novo* in light of Petitioner’s Objection.

Petitioner’s entire Objection is devoted to attempting to show that the District Judge in his criminal case was biased and therefore that the remedy under 28 U.S.C. § 2255 is inadequate or ineffective. Thus, he asserts that he should be permitted to proceed herein under 28 U.S.C. § 2241 under the so-called “savings clause” in 28 U.S.C. § 2255. However, as the Magistrate Judge pointed out, the Tenth Circuit has directly addressed this argument, stating that “even if . . . § 2241 petition did establish bias, § 2255 still would be adequate because [petitioner] could move to recuse the sentencing judge.” *Bradshaw v. Story*, 86 F.3d 164, 167 (10<sup>th</sup> Cir. 1996). Accordingly, the Court agrees with the Magistrate Judge that Petitioner has not shown that his remedy under 28 U.S.C. § 2255 is inadequate or ineffective;

that the Petition herein attacks the fact rather than the execution of his sentence; and that the Court is without jurisdiction to consider this § 2241 petition challenging Petitioner's sentence. Therefore, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety and the petition of Marc Nickl for a writ of habeas corpus herein is DISMISSED without prejudice.

**It is so ordered this 24<sup>th</sup> day of July, 2006.**



DAVID L. RUSSELL  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE